

AMENDED IN ASSEMBLY JUNE 15, 2016

AMENDED IN SENATE MAY 27, 2016

AMENDED IN SENATE APRIL 11, 2016

**SENATE BILL**

**No. 1049**

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**Introduced by Senator Hill**

February 12, 2016

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~~An act to amend Section 316 of the Public Utilities Code, relating to energy public utilities. An act to add Section 326 to the Public Utilities Code, relating to the Public Utilities Commission.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1049, as amended, Hill. ~~Electrical corporations and gas corporations: accident investigations. Public Utilities Commission: close call reporting program.~~

*Under existing law, the Public Utilities Commission has regulatory authority over public utilities. The California Constitution authorizes the commission to establish rules for all public utilities, subject to control by the Legislature.*

*This bill would require the commission to establish procedures and processes to implement a confidential, nonpunitive, and independent close call reporting program for purposes of facilitating the identification of accident precursors by persons familiar with public utility operations and of collecting, analyzing, and disseminating unbiased safety information. The bill would authorize any person to voluntarily submit through the program a confidential close call report that both involves a public utility and relates to public, employee, or contractor safety.*

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations. The Natural Gas Pipeline Safety Act of 2011 requires each gas corporation to develop a plan, as specified, for the safe and reliable operation of its commission-regulated gas pipeline facility, as defined. Existing law requires the commission to adopt inspection, maintenance, repair, and replacement standards for the distribution systems of electrical corporations in order to provide high-quality, safe, and reliable service. Existing law requires every electrical corporation to cooperate fully with the commission in an investigation into any major accident or any reportable incident, as defined by the commission, concerning overhead electric supply facilities, regardless of pending litigation or other investigations, including those that may be related to a commission investigation. Existing law requires every electrical corporation, after the scene of the incident has been made safe and service has been restored, to provide the commission, upon its request, immediate access to specified evidence, information, and documents, including any and all documents under the electrical corporation's control that are related to the incident and are not subject to attorney-client privilege or attorney work product doctrine.~~

~~This bill would require every electrical corporation to cooperate fully with the commission in an investigation into any major accident or any reportable incident concerning any electric supply facilities, rather than only overhead electric supply facilities. The bill would make the above-described requirements that are currently applicable to an electrical corporation additionally applicable to gas corporations, but would permit all of these corporations to postpone commission access to the specified evidence, information, and documents until after service restoration only in the case of a major outage. The bill would provide that facts, information, or documents that concern, discuss, or analyze an accident or a failure involving electrical corporation or gas corporation facilities, but that themselves are not privileged or subject to the attorney work product doctrine, may not be withheld from the commission on the basis that they are or were referenced or discussed in a communication with counsel or incorporated into an attorney's work product.~~

~~Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.~~

~~Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 326 is added to the Public Utilities Code,  
2     to read:  
3     326. (a) The commission shall establish procedures and  
4     processes to implement a confidential, nonpunitive, and  
5     independent close call reporting program for purposes of  
6     facilitating the identification of accident precursors by persons  
7     familiar with public utility operations, including, but not limited  
8     to, public utility employees and contractors, and of collecting,  
9     analyzing, and disseminating unbiased safety information. Through  
10    the program, any person, including, but not limited to, a public  
11    utility employee or contractor or a member of the public, may  
12    voluntarily submit a confidential close call report that both involves  
13    a public utility and relates to public, employee, or contractor  
14    safety.  
15    (b) The commission shall not use a report pursuant to  
16    subdivision (a) or information derived therefrom, except for  
17    information concerning an accident or criminal offense, in an  
18    enforcement action. The commission may establish additional  
19    exceptions to this subdivision.  
20    (c) The commission may contract with a third party to administer  
21    the program.  
22    (d) A public utility employee or the employee of a contractor  
23    performing work for a public utility shall not be subject to  
24    demotion, discharge, or any other form of retaliation or  
25    discrimination for participating in the close call reporting program  
26    established pursuant to this section.

1     ~~SECTION 1. Section 316 of the Public Utilities Code is~~  
2     ~~amended to read:~~

3     ~~316. (a) Each electrical corporation and gas corporation shall~~  
4     ~~cooperate fully with the commission in an investigation into any~~  
5     ~~major accident or any reportable incident, as these terms are defined~~  
6     ~~by the commission, concerning electric supply facilities and~~  
7     ~~commission-regulated gas pipeline facilities, regardless of pending~~  
8     ~~litigation or other investigations, including, but not limited to,~~  
9     ~~those that may be related to a commission investigation.~~

10    ~~(b) After the scene of the incident has been made safe and, in~~  
11    ~~the case of a major outage, service has been restored, each electrical~~  
12    ~~corporation and gas corporation shall provide the commission,~~  
13    ~~upon its request, immediate access to all of the following:~~

14    ~~(1) Any factual or physical evidence under the electrical or gas~~  
15    ~~corporation's, or its agent's, physical control, custody, or~~  
16    ~~possession related to the incident.~~

17    ~~(2) The name and contact information of any known percipient~~  
18    ~~witness.~~

19    ~~(3) Any employee percipient witness under the electrical or gas~~  
20    ~~corporation's control.~~

21    ~~(4) The name and contact information of any person or entity~~  
22    ~~that has taken possession of any physical evidence removed from~~  
23    ~~the site of the incident.~~

24    ~~(5) Any and all documents under the electrical or gas~~  
25    ~~corporation's control that are related to the incident and are not~~  
26    ~~subject to attorney-client privilege or the attorney work product~~  
27    ~~doctrine. Facts, information, or documents that concern, discuss,~~  
28    ~~or analyze an accident or a failure involving utility facilities, but~~  
29    ~~that themselves are not privileged or subject to the attorney work~~  
30    ~~product doctrine, may not be withheld from the commission on~~  
31    ~~the basis that they are or were referenced or discussed in a~~  
32    ~~communication with counsel or incorporated into an attorney's~~  
33    ~~work product.~~

34    ~~(c) Each electrical corporation and gas corporation shall preserve~~  
35    ~~any and all documents or evidence it collects as part of its own~~  
36    ~~investigation related to the incident for at least five years or a~~  
37    ~~shorter period of time as authorized by the commission.~~

38    ~~(d) Any and all documents collected by an electrical corporation~~  
39    ~~or gas corporation pursuant to this section shall be catalogued and~~

1 preserved in an accessible manner for assessment by commission  
2 investigators as determined by the commission.

3 ~~SEC. 2. No reimbursement is required by this act pursuant to~~  
4 ~~Section 6 of Article XIII B of the California Constitution because~~  
5 ~~the only costs that may be incurred by a local agency or school~~  
6 ~~district will be incurred because this act creates a new crime or~~  
7 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
8 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
9 ~~the Government Code, or changes the definition of a crime within~~  
10 ~~the meaning of Section 6 of Article XIII B of the California~~  
11 ~~Constitution.~~